1943 K **File No.** O. University / 43

Legal Dept.

A. **BRANCH**

Subject:— Opinions under the Bombay University Act 1928

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C O N T E N T S.

Legal Department File No.1. O.University /43.

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EKN.7/7/

Office of the R.L.A.

In August 1942 the D.P.I addressed a letter to the Principals of all Government and non-Government Colleges in the British Districts of Province requesting them to submit until further orders weekly reports every saturday on the discipline of the College and a statement ... the form appended. All the Colleges except the three non-Government Colleges in Ahmedabad complied with the request. The three non-Government Colleges in Ahmedabad not only refused to supply the information but questioned the right of the D.P.I. to call for such information. In a further communication addressed ~~for~~ to these three bodies the D.P.I. explained the position as follows:-

"With reference to your letter No..... in regard to the information called for by me, I have the honour to request you again to be so good as to let me have ~~k~~ information regarding the daily attendance in your College as asked for in this office letters of 10th and 12th August and also a brief report, if any untoward incident occurs in your college. As I have to submit my remarks to Government regarding the working of the Colleges to this Province, I am sure you agree that it is very necessary for me to keep in touch with what is happending in all recognised institutions. There is no question of interfering with the administration and day to day working of ~~xxxx~~ your institution as stated in your letter. All I want is information. Other colleges have found no difficulty in giving this information and I should be glad if you would comply with my request."

~~That the Senate~~ The three Colleges again refused to comply with the D-P.I(s request. It appears that the matter was also brought to the notice of the University of Bombay. Sir Chimanlal Setalvad has given notice that he intends to move the following resolution at the next meeting of the Senate.:-

"That the Senate views with apprehension the attempt on the part of the Director of Public Instruction to exercise control and supervision over of affiliated Colleges that are not maintained or ~~xxxxx~~ aided by Government, by requiring them to submit weekly reports on the disciplin of the institution' under various detailed heads including the attendance and conduct of the staff. When affiliation is granted by Government under section 39 of the Bombay University Act to a College, the Government is functus officio and the control and supervision over it thereafter vests in the University to the extent prescribed in the Bombay University Act, while the day to day management and administration rests with its proprietors (Government ~~a~~ pri-vate body as the case may be) and Government may prescribe,,.....

prescribe reasonable and appropriate conditions for giving their grants to aided colleges.

That the Senate requests Government to struck the D.P.R. not to make of the character mentioned above in the future.

That the Senate regrets that the Director of Public Instruction should have deprived scholders holding Government scholarships at the Commerce College, Ahmedabad, as a measure of realization because the Principal declined to furnish weekly reports regarding the discipline of the institution including the attendance and conduct of the staff.

The Syndicate has also supported the resolution as under:-

"Resolved that it be reported to the Senate that, in the opinion of the Syndicate, the right to call for reports, returns and other information from colleges affiliated to the University vests in the Syndicate alone under the Bombay University Act, and that the constitutional position under the Act with regard to affiliated Colleges is that, once a College is affiliated by Government the powers of control and supervision over it vest in the Syndicate, the rights of Government being restricted to affiliation or disaffiliation u der the specific terms of sections 39 and 42 of the Act.

As the matter is likely to be taken up the Senate at its meeting on 17th June, the D.P.I. proposed to explain the position to the Senate on the lines of the grounds contained in paras. 2 and 3 of his letter dated 28th May 1943 (page 1 ante). He, however, desires that the position in regard to the claim of the University that Government has no right to call for information from Colleges affiliated to the University should be examined legally.

2. The object of the Bombay University Act, 1928, as stated in the preamble, is to enable the University "to provide greater facilities for higher education and to conduct post-graduate teaching and research in all branches of learning, including technology, while continuing to exerci due control over the teaching given by colleges affiliated to it from time to tiem." section 4(1) provides that the University shall be and shall be deemed to have been incroporated for the purposes of making provision for the instruction of students.....to make regulations relating to the residence and conduct of students, to lay down courses of instruction for the various examinations, to guide the teaching in colleges to inspect colleges and to take measure to ensure that proper standards of teaching are maintained i them..... and to do all acts, not

inconsistent .....

~~xxxxxx~~ consistent with the Act, which tend.....
The various authorities of the University are specified in section 7 and powers of each of the authorities are separately provided for. Section 18 enumerates the powers of the Senate. The powers of the Sydindicate are specified in section 21. Under clause (h) of section 21 ~~of~~ the Sydicate has power to arrange for the direct the inspections of colleges and hostels, and to issue instructions for maintaining the efficiency of the colleges; and in case of disregard of such instructions, to recommend modification of the conditions of affiliation and to take such other steps as it deems proper. Underclause ~~(1)~~ (i) it has power to call for reports, returns and other information from the colleges. Under section 35(1) subject to the provisions of the Act and the Statutes, the Syndicate can frame Ordinances for all ~~the~~ or any of the matters specified in clauses (a) to (u) thereof. Under clause (d) it can make Ordinances providing for the recognition of colleges and hostels; ~~and~~ under clause (f) for residence and conduct of students; under clause (m) for the discipline to be enforced in regard to the graduates and unde graduates in so far as they come within the jurisdiction of the University for purposes of study and examination under clause (r) in respect of inspection of colleges and the repor's, returns and other information to be furnished by colleges, and under clause (s) for the registers of students to be kept by colleges. Section 41(1) makes it obligatory upon every college affiliated to the University to furnish such reports, returns and other information as the Syndicate may require to enable it to judge the efficiency of the college. Under section 41(1) the Syndicate shall cause every such college to be inspected by one or more competent ~~persons~~ persons authorised by it in ~~the~~ this behalf and under sub-section (3) it may call upon any college to inspected to take, within a specified period, such action as may appear to them to be necessary in respect of any of

the matters referred to in sub-section (1) of section 39.

3. Ordinance 101 framed under section 35(1)(r) of the Act provides that inspection will be directed mainly to the purpose of ascertaining if the main conditions of affiliation are maintained or not, and of seeing that adequate measures are taken to ensure efficiency. Ordinance 103 provides for submission of returns in the prescribed form. Ordinance 104 provides for maintenance by the college of a register of daily attendance of each student and a register for every student, details about his admission, date of birth, attendance at college examinations etc. It is clear from all these provisions that it is the Syndicate and no other authority of the University which has the power to call for reports. Returns and other information from the affiliated colleges and to have such colleges inspected with a view to ascertaining if the conditions of affiliation are maintained or not, and of seeing that adequate measures are being taken to ensure efficiency. Under the Bombay University Act since this power has been vested solely in the Syndicate it would not be open to Government through the D.P.I. to call for weekly reports, returns or other information from any affiliated college for any purpose covered by the Act.

4. It appears however that apart from their rights and obligations under the Bombay University Act affiliated colleges have also certain rights and obligations as institutions recognised by Goverment, for instance an affiliated college as a recognised institution can be granted land for educational purposes at concession rates. It has also the privilege of enjoying certain railway concessions. Further under rule 1 of the Grant-in-Aid Code a recognised institution entitles its manager.

(1) to present its pupils at all public examinations,

(2) to present pupils as candidates for scholarships and to admit scholarship holders, and

(3) to apply for grant in aid from public funds. Rule 3 privides that all colleges being expected to be affiliated to a statutory Univesity treated as recognised institutions without formal application. Rule 8 provides for inspection of recognised institutions by the

department.....

Department of Public Instruction and lays down that the managers shall punctually supply the Department with such returns and information as may from time to time be required. Rule 73 provides that colleges which have been affiliated to the University of Bombay and to the registration of which the sanction of Government has been obtained will be admitted to aid under these rules in this Code so far as they may be applicable. It is apparent from these provisions that colleges affiliated to the University are if so facto recognised institutions for the purposes of the Grant-in-Aid Code. It has been ascertained from Secretary, G.D. and the D.P.I. that affiliated colleges do exercise the second and third privileges specified in rule 1 of the Grant-in-Aid Code. So far as the three recalcitrant colleges of Ahmedabad are concerned though they have not applied for any grant-in-aid they have nevertheless taken advantage of the second privilege and admitted scholarship holders to their institutions. Admission of scholarship holders may not be a substantial privilege, nevertheless it is privilege beneficial to the institution which the colleges would not have but for the fact that they are recognised institution. But that apart Government have a special interest in college students who have been given Government scholarships at these colleges; As the D.P.I. rightly points out the scholarships are awarded on condition of regular and the pregress satisfactory. It is part of the D/P.I.'s duties to see that the students in enjoyment of the scholarship are subject to proper discipline and their progress at college is satisfactory. He is in a sense in the position of 'loco parentic' and like any other father would be entitled to request the head of the college for such information as he may deem necessary for his own satisfaction. Should a recognised institution fail to comply with the request of Government to submit necessary returns or information the only sanction which Government could apply would be the withdrawal of the privileges extended to such recognised institutions. From this aspect of the case the D.P.I was justified in with/drawing the scholars from the defaulting colle of Ahmedabad. His action in calling for the reports and returns

attendance and satisfactory progress and the Principal of the College has to certify when drawing the Scholarship amount that the attendance of the Scholar is regular

not.....

and could not
not have been, under any of the provisions of the Bombay University Act and could be justified only on the ground of the general right of control and supervision which Government exercises over recognised institutions for the grant of special concessions and privileges enjoyed by them.

Sd/ P.N.M.

Remembrancer of Legal Affairs.

U.R. to E.D.No.25-P-Confl. dated the 12th June 1943.

EKN.7/7/

Office of the R.L.A.

The authorities of the Institute of Plant Industry, Indore have applied to the Syndicate of the Bombay University for recognising certain members of the staff employed in the Institute as University Teachers for the purpose of guiding students reading for the higher degrees of the University. The Registrar of the University is of opinion that as the Institute of Plant Industry, Indore, is not within the territorial jurisdiction of the Bombay University the Sydicate cannot grant the request of the authorities of the Institute unless the Government of Bombay includes the Institute ~~unless~~ within the territorial jurisdiction of the University. He accordingly requests Government to include the Institute of Plant Industry, Indore within the territorial jurisdiction of the Bombay University under section 4A of the Bombay University Act, 1928.

2. Before the Bombay University Act, 1928 was passed the territorial limits within which the Bombay University could exercise the powers conferred upon it by the Indian Universities Act, 1904 were defined as the Province of Bombay and Sind including any State in India which on the 20th August was in political relations with the Bombay Government and any foreign possession included within the boundaries of the Sind Province and the Baroda State. Please see Government of India Notification No.717 E.E.D. dated 20th August 1904. That notification ceased to operate when the Bombay University Act, 1928 came into force; and consequently it was formally repealed by Government of India Notification No.1369 dated 10th July 1030. As there was a no provision in the Bombay University Act, 1928 for defining the territorial limits of the Bombay University constituted under that Act, it was considered necessary to amend the Act for the purpose. The Bombay University on being consulted in the matter desired that the University should be given jurisdiction over the territories which were within its territorial limits under the old Act of 1904 and that those territories should be defined. The

Bombay.....

Bombay Government accepted the view of the Bombay University, but under section 60A (3) (f) of the old Government of India Act read with entry 5(b) of Part II of Schedule I to the Devolution Rules the Local Legislature could with the previous sanction of the Government General make a law defining the jurisdiction of the Bombay University outside the Province of Bombay. Consequently a draft Bill was accordingly prepared for the Governor-General's sanction. The Bombay Government wrote to the Government of India stating that it intended to notify only such Indian States and other territories under the Bill as were under the jurisdiction of the University before 1923 and that it would notify any other territories without the prior consent of the Government of India. The Governor General accorded his sanction with the result that section 4A came to be inserted in the Bombay University Act in 1930. A notification No.4274 dated the 17th March 1931 was issued notifying the territories and Indian States included within the territorial limits of the Bombay University. Indore is not one of those Indian States. The Indian Institute of Science, Bangalore, Imperial Agricultural Research Institute, New Delhi, Imperial Veterinary Institute, Mukteser and the Imperial Dairy Research Institute, Bangalore were subsequently notified under section 4A; but they are all in British territory and controlled by the Government of India. The Institute of Plant Industry, Indore does not appears to be of the same status importance as those four institutions and is situated in an Indian State. The following question are accordingly raised for the consideration of the R.L.A.:-

(1) Whether the Institute of Plant Industry, Indore can be notified under section 4A of the Bombay University Act, 1928 although Indore is not one of the Indian States formerly included within the territorial of the Bombay University.

(2) Whether the expression "other territories" can be interpreted so as to enable Government to include within the jurisdiction of the Bombay University areas outside the Bombay Province; and

(3).....

(3) Whether the inclusion of the Institute of the Pjant Industry, Indore within the territorial limits of the Bombay Uniyersity would mean and encroachment upon the territory of another University.

A similar question arose when the Indian Institute of Science, Balgalore made a request for its inclusion the territorial jurisdiction of the Bombay University for the M.S.C. degree and the University of Bombay opined:

" (a) Under the Bombay University Act,1928 it was not competent to the University to affiliate instutitons or Departments of Institutions for post graduate teaching.

(b) Section 25(2) of the Bombay University Act does not restrict the power of the Syndicate under section 35(g) and 35 (t) of the Act to appoint University teachers from among persons who are not teachers in affiliated colleges.

(c) If the institute were included within the territorial jurisdiction of this University in accordance with its request it would be possible for the Syndicate to recognise some of the members of the staff of the Institute even if it be not affiliated to the University as University teachers competent to guide research far the M.Sc. degree of this University. Students of this University and of other Universities recognised by this University who have been studying at this Institute would then be able to submit their thesis for the M.Sc. degree of this University without any difficulty."

The R.L.A. who has consulted agreed with the views (b) and (c) of the University. (see R.I.A.'s opinion No.23 dated the 5th January 1932). Similar is the request made by the Institute of Pjant Industry, Indore and consequently if that Institute can be lawfully notified under section 4A, would be competent for the Bombay University to appoint some members of its staff as University teachers to give instructions to students studying for any Post Graduate course of this University and the fact that the Institute is not proposed to be affiliated to the Bombay University presents no difficulty for its being notified under section 4A. The main question for consideration therefore is whether a notification under section 4A would be lawful.

Section 4A provides that the territorial limits within which the powers conferred upon the University by the Act shall be exercised shall comprise the whole of the Bombay Presidency (excluding Aden) and such Indian States and other territories as.....

as may from time to time be notified in this behalf by the local Government in the Bombay Government Gazette; This provision apparently provides for extra/territorial jurisdication. "Territory" means the tract of land of district within which jurisdcition is exercised. This expression, as I interpret it, is not necessarily confined to political, geographical and administrative areas like Provinces, Indian States Districts etc., but may include educational centres in such areas or even particular institutions. It is however not free from doubt if its meaning can be stretched to include non-educational institutios like the Institute of Plant Industry, Indore. But it is presumably in the light of this interpretation that the Indian Institute, of Science, Bangalore, the Imperial ~~xxxxxxxxx~~Agricultural Research Institute, New Dolhi, the Imperial Veterinary Institute, Maktesar and the Imperial Dairy Research Institute, Bangalore have been brought within the territorial limits of the University.

The expression " other territories" insection 4A means territories other than the whole of Bombay Presidency and the notified Indian States. Consequently any Indian State or a part thereof and any part of British India can be notified under section 4A and brought within the territorial jurisdiction of the Bombay University. It is true that Indore is not one of the notified Indian states and the Government of Bombay has given an undertaking to the Government of India that no other territory would be notified under section 4A without the prior consent of the Government of India. But since then there has been a change in the ligislative powers of the Central Government and the local Governments. When the undertaking was given the power to legislatre defining the jurisdiction of any Univer outside the Province in which it was situated vested in the Central Government and no legislation could be undertaken by any Provincial Government ~~xxxx~~ for the purpose without the prior consent of the Governor General (See section 80A (3)(f) of the Old Government of India Act read with entry 5(b) of Part II of Schedule I to the Devolution Rules). "Education" including Universities other than

Benaras.....

Banaras Hindu University and the Aligarh Muslim Univesity is now exclusively a provincial exclusively a provincial subjects (see items 17 and 33 in the Provincial Legislative List II in the Seventh Schedule to the Government of India, Act,1935, as amended by the India and Burma (Miscellaneous Amendment)Act,1940). It is true that a Provincial Legislature can make laws for the Province or any thereof (see section 99(1) of the Government of India Act) and a notification under section 4A of the Bombay University Act including within its jurisdiction the Institute of Plant Industry, Indore would ordinarily have contravened section 99(1) of the Government of India Act But Powers vested in the Provincial Govt. to extend the territorial jurisdiction of the Bombay University beyond the Province of Bombay under section 4A of the Bombay University Act are saved by section 292 of the Government of India Act. Consequently, there appears no legal objection to Government notifying the Institute of Plant Industry, Indore, under section 4A, and strictly speaking no prior consent of the Government of India appears necessary However, it would be advisable to consult the Government of India in the matter.

With regard to the last question, it appears from the D.P.I's letter at page 3 ante that Indore comes under the Territorial limits of the University of Agra. So long as the question of affiliation of the ~~University~~ Plant Industry, Indore, does, not arise there appears to be no likelihood of any conflict of jurisdiction if this particular Institute is brought within the territorial limits of the Bombay University. By notifying the Institute under section 4A Government would merely be giving power to the syndicate to recognise members of its staff as teachers and as such it can hardly be said to be encroaching upon the preserves of the Agra University. The conflict of jurisdiction will not arise unless and until the Institute applies for affiliation. But that stage, according to the present intentions, is not likely to be reached in the near future, and, in any event, it would be open to Government for good and

sufficient.....

sufficient reasons to refuse affiliation under section 30(3) of the Bombay University Act.

It is however for Government to defide whether it would be administratively expedient to accede to the Bombay University's request and bring the Institute of Plant Industry, Indore, within its territorial limits for the sole purpose of enabling the University to recognise a few members of that Institute as teachers. Since the Institute is located in Indore, which falls within the territorial limits of the Agra University, it would it seems be proper to consult the latter University and the Government of India beforearriving at a decision to notify the Institute under section 4A.

Sd/ P.N.K. 17/9

Remembrancer of Legal Affairs.

U.R. to E. D.No.16300, dated the 20th September 1943.

EKn.7/7/

"True Copy- Original papers being of bad quality-destroyed".

Sd/

Superintendent,

D.Branch, Legal Department.

SVA. 13/8

SVB. 13/8